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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ISIAH SKINNER, ET AL.

***CIVIL ACTION NO. 04-924**

VS.

***MAGISTRATE JUDGE HILL**

OFFICER JERRY GRAY, ET AL.

***BY CONSENT OF THE PARTIES**

ORDER

Before the court are the Motion to Quash Subpoena Duces Tecum and Written Objections to Subpoena Duces Tecum filed on behalf of the Morgan City Police Department, Officer Jerry Gray, Officer John Schaff and Sergeant Gary Pederson on July 22, 2005. By these pleadings, the defendants seek to quash and object to a Subpoena Duces Tecum issued through this Court by plaintiff's counsel Mack I. Frank. The subpoena duces tecum which seeks "complete employment record of Officer Jerry Gray, Officer John Schaff and Sergeant Gary Pederson including all accommodations, reprimands and suspensions throughout the duration of employment" was served upon the Morgan City Police Department on July 18, 2005.

The record in this case reveals that this court granted judgment in favor of the defendants on May 10, 2005, and that this final judgment is on appeal in the United States Court of Appeals for the Fifth Circuit. [See rec. doc. 42, Notice of Appeal filed on May 20, 2005]. It is well settled law that once a party files a notice of appeal, the district court is divested of jurisdiction except to "take action in aid of the appeal" or to correct clerical errors under Fed.R.Civ.P. 60(a). *In re Dugas*, 115 Fed.Appx. 674, 676 (5th Cir. 2004) citing

Winchester v. United States Attorney for the Southern District of Texas, 68 F.3d 947, 949 (5th Cir. 1995). Accordingly, this court is without jurisdiction to grant the instant Motion or rule on the defendants' Objections. Moreover, although FRCP 45 "grants a district court the power to issue subpoenas, ...the subpoena power of a court cannot be more extensive than its jurisdiction." *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76, 108 S.Ct. 2268, 2270 (1988). It follows, then, that if the "process was not issued in the aid of determining [the court's] jurisdiction, then the process is void..." and any refusal to honor it is proper. *Id.* Accordingly;

IT IS ORDERED that the Motion to Quash Subpoena Duces Tecum and Written Objections to Subpoena Duces Tecum are **DISMISSED** for lack of jurisdiction.

Signed this 22nd day of July, 2005, at Lafayette, Louisiana.

C Michael Hill
C. MICHAEL HILL
UNITED STATES MAGISTRATE JUDGE

COPY SENT

DATE 7-22-05

BY gbr

TO Frank

Gibson

Stelly

vo
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